tion proceeding was instituted, because, it claims, prior to that time the alleged violations had occurred, and that instantly upon their occurrence the oil became forfeit to the State. It asserts that upon such forfeiture, all title and rights of the Debtor to the oil were devested and that title was vested in the State. In support of this, it urges the rule announced in *United States v. 1960 Bags of Coffee*, 8 Cranch 403, 3 L. Ed. 602, and the line of cases following it.

We believe that the statute under consideration here does not provide for a forfeiture immediately upon the violation, and that the rule announced in the *Bags of Coffee*, case, supra, does not apply. The statute is to be construed according to the plain import of its words. *United States v. Grundy*, 3 Cranch 351, 2 L. Ed. 459. But, regardless of this, the rule relied upon by the State is not decisive of the issue here. It is true that in the *Bags of Coffee* case this Court held that the forfeiture instantly occurred and that the judgment of condemnation related back to the forfeiture and vested the title as of that time in the sovereign, destroying all intermediate claims. It did not hold, however, that upon the *forfeiture*, title immediately vested in the Sovereign or that the rights of the owner were thereupon instantly devested out of him. For, as Mr. Justice Story said in *Clark v. Protection Insurance Co.*, 1 Story (U.S.) 134:

> "It is not correct to say that property *forfeited* is vested in the government at the very moment of *forfeiture*, and the title of the owner immediately

devested. On the contrary, the established doctrine is that, notwithstanding the *forfeiture*, the property remains in the owner until it is actually seized by the government, and then, by the seizure, the title of the government relates back to the time of the *forfeiture*. In the case of *United States v. 1960 Bags of Coffee*, 8 Cranch (U.S.) 404, and *Gelston v. Hoyt*, 3 Wheaton (U.S.) 247, there had been a seizure and prosecution for the *forfeiture* by the government. The case of *The Brig Mars* in this court (1 Gall. (U.S.) 192, 198) as to this point has never to my knowledge, been doubted or denied. The case of *Lockyer v. Offley*, 1 T.R. 252, 260, manifestly proceeded upon the ground that until seizure, the property of the owner was not devested."

(c) We agree with the State that the confiscation act under consideration is penal in the international sense, and that the bankruptcy court is without power to enforce it or move in aid of it. We are not able to concede, however, that because this is true, it is the duty of the bankruptcy court, which has the actual possession of the oil, to deliver it to the State in order to permit the State to institute confiscation proceedings against it. On the contrary, it is clear to us that such a move on the part of the federal court would be a plain violation of the rule—

"The courts of no country execute the penal laws of another."

To grant the State's request would be to recognize and assist in the enforcement of the State's penal statute. Although the State asserts that violations of its laws have made the oil forfeit to it, it does not follow that the oil is now the property of the State, for a seizure and a judgment of condemnation are yet to be accomplished. *Clark v. Protection Insurance Co.*, supra. It is true—

> "that if the prosecution in the courts of one country for a violation of its municipal laws is *in rem*, to obtain a forfeiture of specific property *within its jurisdiction*, a judgment of forfeiture, rendered after due notice, and *vesting the title* of the property in the state, will be recognized and upheld in the courts of any other country *in which the title* to the property is brought in issue." *Wisconsin v. Pelican Insurance Co.*, 127 U. S. 265, 32 L. Ed. 239. (Emphasis ours.)

but if a single judicial step remains to be taken for the condemnation under a forfeiture for violation of a penal law of one country, the courts of another country will neither move in aid of the enforcement of such forfeiture nor recognize titles contingent thereon. *Wisconsin v. Pelican Insurance Co.*, supra; *Rose v. Himely*, 4 Cranch 239, 2 L. Ed. 608. In the first case, the court distinguishes between a title already complete by virtue of the foreign judgment, and an asserted title requiring further judicial action to complete it. It points out that in whatever form the State pursues her right to punish

the offense against her sovereignty, every step of the proceeding tends to one end, the punishment of the offender, and quotes with approval the statement by Lord Kames in his *Principles of Equity* which had been cited and approved by Mr. Justice Story:

> "But this includes not a decree decerning from a violation; because no court reckons it is bound to punish, or *to concur in punishing* any delict committed extra territorium." (Italics our)

In *Rose v. Himely*, supra, a vessel owned by an American had violated a municipal law of France and, by such violation, had subjected itself and its cargo to forfeiture to France. The vessel was seized by the French, and carried before a tribunal at St. Domingo, which tribunal purported to be a lawful French court. There the vessel and its cargo were sold. Later the cargo made its appearance at an American port and the former American owners filed a bill to libel the cargo, claiming it as their property. The purchasers appeared and asserted their title, based upon the forfeiture, the seizure and a judgment of condemnation entered by the French tribunal. Mr. Chief Justice Marshall, after deciding that the tribunal at St. Domingo was unlawfully constituted and was not a lawful French court, determined that the judgment of condemnation was void. He then proceeded to examine the effect of the invalidity of such judgment on the purchasers' title and decided that

> "If this case is to be considered as if no sentence of condemnation was ever pronounced, the prop-

erty is not changed, and this court, having no right to enforce the penal laws of a foreign country, can not inquire into any infraction of those laws. The property in this particular case was purchased under circumstances which exclude any doubt respecting its identity, and respecting the full knowledge of the purchaser of the nature of the title he acquired. The sentence of condemnation being considered as null and invalid, the property is unchanged, and, therefore, ought to be recovered by the libellants in the court below."

(d) The only action one sovereign ever takes with regard to the penal laws of another is by way of extradition, to surrender offenders to the state whose laws they have violated. 3 *Michie's Enc. of U. S. Reports* 1076. And this right of extradition comes about only by virtue of treaties, and, among the American states, by virtue of the act of Congress providing for surrender of fugitives. Now, it is not disputed by any one that the oil in controversy is in the actual possession and custody of the Trustee in Bankruptcy and wholly within the federal jurisdiction. The State has, in effect, demanded the "extradition" of this alleged offending property, but, of course, there is no treaty requiring it; there is no statute permitting it.

(e) The Bankruptcy Act, Sec. 57j; (Title 11, U. S. C. A., Sec. 93(j) provides:

"Debts owing to the United States, a state, a county, a district, or a municipality as a penalty

> or forfeiture, shall not be allowed, except for the amount of the pecuniary loss sustained by the act, transaction or proceeding out of which the penalty or forfeiture arose, with reasonable and actual cost occasioned thereby, and such interest as may have accrued thereon according to law."

Thus, the Congress has said that neither of the sovereigns would undertake to exercise its sovereign right in the properties and assets of the bankrupt and deprive the creditors of properties and funds out of which their claims could be paid, except to the extent such sovereign actually suffered pecuniary loss. *In Re Caponigri*, 192 F. 291. Although the demand of the State in this case may not be within the strict letter of the provision of the statute above quoted, it is plainly within its spirit and purpose. *In Re Weber*, 106 N.E. 98 (New York Court of Appeals). If the motion of the State should be granted, property out of which the innocent creditors of the Debtor corporation are entitled, in bankruptcy, to have applied to the payment of their claims would be gone; instead of being applied to the payment of their debts, it would be applied to the satisfaction of a state penalty. *In Re Southern Steel Co.*, 183 F. 358.

For these reasons, we think the judgment of the Circuit Court of Appeals is right and should be affirmed. In the event these grounds fail, then we urge the unconstitutionality of the confiscation act, and pass on to Propositions 2 and 3.

Statement and Argument Under Respondent's Second Proposition

Statement

We refer to the Statement under the First Proposition.

Argument

The State quarrels with us for setting out in our original brief in opposition to the petition, certain of the provisions of the conservation statutes and of the rules and regulations of the Railroad Commission promulgated thereunder which regulate different phases of the oil business in Texas, and the State says we have no right to have these provisions considered in passing upon the reasonableness and validity of the confiscation act, because, they say, they are not involved and no attempt has been made by the State to apply the same to our disadvantage here.

A sufficient answer to this is that, although the State does not, in its motion filed in the bankruptcy court, asking permission to institute confiscation proceedings against the oil, charge violations of the various provisions of the statutes and rules which we outline in the original brief, the State has not said and, of course, does not bind itself that it will not, if permitted to institute confiscation proceedings, take advantage in the confiscation proceedings of any violations which, under the law, it is entitled to take. We pointed out in our

original brief that a violation of any of the provisions we outlined would, under the statute, subject the oil to confiscation. And unless and until the Attorney General of Texas can, under the law, and does bind himself and the State of Texas to proceed in the confiscation proceedings only for the alleged violations with reference to excess production and transportation without tenders and to waive any other provisions of the law which might subject the oil to confiscation, we are surely in position to urge them all.

For the Court's convenience we list here the various provisions of the statutes and the rules of the Railroad Commission set out in the original brief:

The oil which Article 6066a declares shall be forfeited is described in Section 1, paragraphs (d) and (e) of the Article, as follows:

> "(d) 'Unlawful oil' as that term is used herein shall include oil which has been produced within the State of Texas from any well or wells in excess of the amount allowed by any order of the Commission, and oil which has been produced within said State *in violation of any law of said state, or in violation of any order of the Commission,* and shall include any oil transported in violation of any such law or in violation of any such order.
>
> (e) 'Unlawful product' shall be construed to include any product, any part of which was processed or derived in whole or in part from unlawful

oil or from any product of unlawful oil or from unlawful gas or which is transported in violation of any order of the Commission or in violation of any law of Texas." (Italics our)

The Legislature of Texas has made unlawful (Article 6014 R. S. of Texas) the production of petroleum in such a manner or in such amount or under such conditions as to constitute waste. Among the things which it has declared shall constitute waste are the following:

"(a) The operation of any oil well or wells with an insufficient gas oil ratio * * *

(c) Underground waste or loss, however caused and whether or not defined in any other subdivision hereof.

(e) The creation of unnecessary fire hazards.

(h) Surface waste or surface loss, including the storage, either permanent or temporary, of crude petroleum oil, or the placing any product thereof in open pits or earthen storage, and all other form of surface waste or losses, or destruction without beneficial use, either of crude petroleum oil or of natural gas.

(j) The production of crude petroleum oil in excess of transportation or market facilities or reasonable market demand * * *."

The production of oil in violation of any of the foregoing provisions or any rule or regulation of the Rail-

road Commission made pursuant to such provisions subjects the petroleum so produced or any product made from it to confiscation under Article 6066a.

Article 6049 (c), Section 5, R.S. of Texas, requires that all persons producing, storing, transporting, refining, reclaiming, treating, marketing or processing crude petroleum or its products keep in this state accurate records as to the amount produced, transported, etc. The failure of any such producer, transporter, refiner, etc., to keep such records makes the petroleum or products which he has manufactured or handled subject to confiscation.

Pursuant to the various statutes, the Railroad Commission of Texas has promulgated many rules and regulations. We quote some of them:

Special Rules Governing the East Texas Field

"Rule 1. All flowing wells shall be equipped with and produce through tubing of not more than 2½" in diameter. Bottom of tubing shall not be higher than within one joint of top of producing sand • • •

Rule 2. All wells shall be equipped with adequate chokes or beams to properly permit the taking of allowable production.

Rule 4. All flowing wells must be produced through a separator of ample capacity, which separator shall be kept in good working order.

Rule 8. The gas oil ratio of each well shall not exceed 500 cubic feet of gas per barrel of oil • • •

Rule 10. All casing head gas, which can not be utilized without violation of the rules and regulations of the Commission, shall be piped to a point at least 150 feet from any producing well, stock tank or other fire hazards, and burned * * *

Rule 12. Any rubbish or debris that might constitute a fire hazard shall be removed to a distance of at least 100 feet from the vicinity of the wells, tanks and pump station. All waste oil shall be burned or disposed of in such manner as to avoid creating a fire hazard or polluting streams or fresh water strata * * *

Rule 15. All oil produced in said field shall be first measured by being run directly from the well in which it was produced into a lease tank for gauging, and the same shall there be gauged by the producer and a record thereof kept and used as the basis for such production reports as are made to the Railroad Commission of Texas. Said lease tanks shall be located on the lease on which the well whose oil is being measured is located, or on an adjoining lease. One tank or tank battery only shall be used in the measurement of oil from any well or group of wells located on such lease * * *

Rule 16. All purchasers, producers, pipe line and/or carriers of crude petroleum shall equip their gathering lines from field storage tanks with lockstops. New ball seals with name or initials of

gathering or purchasing company, numbered consecutively, shall be attached to each stop cock after each run of oil * * *."

A violation of any of these regulations subjects the offender to a fine of not more than $1,000.00 for each and every day of such violation and for each and every act of such violation (Article 6036, R. S. of Texas) and, in addition, makes the oil in connection with which the violation occurs subject to confiscation.

Article 6066a, Section 10, which provides:

"All unlawful oil and unlawful products, regardless of the date of production or manufacture thereof, are hereby declared to be a nuisance and shall be forfeited to the State as hereinafter provided * * *."

It may be that the penalties provided by Article 6036, supra, of not more than $1,000.00 for each and every violation and for each and every day of violation are not so excessive and unreasonable as to fall under the ban of the Fourteenth Amendment, although we believe they closely approach the line, but when, in addition to this penalty, provision is made for the complete forfeiture of all petroleum concerning which any violation has occurred, we think the bounds of reason are passed.

Still more unreasonable is the provision of Article 6066a which makes it possible to forfeit any petroleum product any part of which is derived in whole or in part from unlawful oil. The oil in controversy is fuel oil,

which the Court judicially knows to be a product of crude petroleum. In order to subject the whole of this fuel oil to forfeiture then, it is only necessary under the statute to prove that one barrel of it was derived in whole or in part from unlawful oil.

The State attempts to justify the harsh penalties of the confiscation statute on the ground of police power and on its undoubted right to pass reasonable regulations looking to the conservation of petroleum, and it claims that so long as any regulation it passes has reasonable relation to the end sought to be accomplished, the courts are powerless to interfere.

We agree with the State that it possesses great powers concerning its natural resources. We agree that it is necessary to prevent the waste of petroleum. We do not agree with the State nor with the Circuit Court of Appeals in *Thompson v. Spear*, —— F. (2d) —— (not yet reported), that the situation in East Texas with reference to the production of petroleum became such as to require the declaration of martial law for a time. On the contrary, we emphatically deny that the situation in East Texas either required or was any excuse for the declaration of martial law. This court in *Sterling v. Constantine*, 287 U. S. 378, 77 L. Ed. 375, expressly denied it.

Although the sovereign possesses wide police power, that power nevertheless has its limits beyond which the sovereign can not go. *Lochner v. New York*, 198 U. S. 45, 49 L. Ed. 937, in which it was said:

"It must, of course, be conceded that there is a limit to the valid exercise of the police power by a state. Otherwise the 14th Amendment would have no efficacy and the legislatures of the states would have unbounded power and it would be enough to say that any price of legislation was enacted to conserve the morals, the health, or the safety of the people; such legislation would be valid, no matter how absolutely without foundation the claim might be. The claim of the police power would be a mere pretext—become another and delusive name for the supreme sovereignty of the state to be exercised free of constitutional restraint. This is not contended for. In every case that comes before this court, therefore, where legislation of this character is concerned, and where the protection of the federal constitution is sought, the question necessarily arises: Is this a fair, reasonable and appropriate exercise of the police power of the state, or is it an unreasonable, unnecessary and arbitrary interference with the right of the individual to his personal liberty * * *."

Jacobs v. Massachusetts, 197 U. S. 11, 49 L. Ed. 643;

Mugler v. Kansas, 123 U. S. 623, 31 L. Ed. 205;
Minnesota v. Barber, 136 U. S. 313, 34 L. Ed. 455;
Atkins v. Kansas, 191 U. S. 207, 48 L. Ed. 148;
Buchanan v. Warley, 245 U. S. 60, 62 L. Ed. 149.

Nor can police power be put forward as an excuse for unjust and oppressive legislation.

Davidson v. New Orleans, 96 U. S. 97, 24 L. Ed. 616;

Yick Wo v. Hopkins, 118 U. S. 356, 30 L. Ed. 220.

On the other hand, courts may inquire into the validity of a statute and hold it to be unconstitutional because it is not within the scope of legislative authority, and it may be without the scope of legislative authority either when it proposes to accomplish something prohibited by the constitution or to accomplish some lawful or even laudable object by means repugnant to the constitution.

And, as was said in *Sterling v. Constantine*, supra, the determination a governor may make (with reference to martial law) and within the range of the authority to preserve law and order have all the weight which can be attributed to state action, but

> "It does not follow from the fact that the executive has this range of discretion, deemed to be a necessary incident of his power to suppress disorder, that every sort of action the governor may take, no matter how unjustified by the exigency and subversive of private right and the jurisdiction of the courts, otherwise available, is conclusively supported by mere executive fiat."

So, we think it can not be said that every means by which a state may seek to accomplish a lawful end is

justified because it bears a reasonable relation to the end. Though the end be within the power of the state, the means may be so harsh and oppressive as to meet the condemnation of the 14th Amendment.

St. Louis, Iron Mountain, Southern Ry. Co. v. Williams, 251 U. S. 63, 64 L. Ed. 139;

Coffey v. Harlan County, 204 U. S. 659, 51 L. Ed. 666;

Seaboard Air Line v. Seegers, 207 U. S. 73, 52 L. Ed. 108;

Waters Pierce Oil Co. v. Texas, 212 U. S. 86, 53 L. Ed. 417.

We think, therefore, that the right of the State to enforce this confiscation law does not depend upon the decision by the legislature that the law is reasonable, but that it must stand on its own bottom and that if it is plainly unreasonable, it will fall, regardless of the legislature's opinion about it.

We know, of course, that laws have been held valid which provide for the confiscation or forfeiture of property used in violation of the revenue laws and ships engaged in piracy and of property of traitors, etc., but we do not think it follows that sovereigns will be permitted to punish any and all crimes or offenses by the confiscation of property connected therewith or concerning which the crime or offense occurs.

This court has said in *Lawton v. Steele*, 152 U. S. 133, 38 L. Ed. 385, that a house may not be torn down because it is put to an illegal use, since it may be as readily used for a lawful purpose. And in the case of *United States v. The Brig Malek Adhel*, 2 Howard 209, 11 L. Ed. 239, this court, commenting on the right to confiscate, under the law of nations, ships and cargoes engaged in piratical acts, said that it was true that the law inflicts the penalty of confiscation

> "for gross and wanton violations of duty. But, then, it limits the penalty to cases of extraordinary turpitude or violence. For petty misconduct or petty plunderings, or petty neglect of duty, it contents itself with the mitigated rule of compensation in damages."

We believe that there must be a variety of cases to which the rigorous power of confiscation can not and ought not to extend. As was said in *Laurel Hill Cemetery v. San Francisco*, 216 U. S. 358, 54 L. Ed. 515:

> "And yet again, the extent to which legislation may modify and restrict the uses of property consistently with the constitution is not a question of pure abstract theory alone. Tradition and the habits of the community count for more than logic."

There must be an end somewhere to the power of the state to punish for crime. We dare say this court would not hesitate to declare invalid a state law providing that a person guilty of murder should be hanged, drawn and quartered. We find it difficult to believe also that this

court would let stand a law providing for the forfeiture of a field of wheat in the sowing of which a child had been unlawfully employed, or a law providing for the forfeiture of a Pullman car because of some unlawful conduct of the conductor therein. Of course, these are grossly exaggerated cases, but where is the line to be drawn? If the State of Texas can confiscate a million barrels of fuel oil because one barrel thereof has been produced or transported in violation of the law, then can not the State also confiscate a citizen's whole estate because of some minor infraction? These may be arguments of inconvenience, but we are unable to perceive the end of what the State might lawfully do if this law is valid.

Statement and Argument Under Respondent's Third Proposition

Statement

The Respondent did not urge in the Courts below, but urges here that Article 6066a, Sec. 10, R.S. of Texas, providing for forfeiture of unlawful oil is a direct burden upon interstate commerce and is in contravention of the commerce clause of the Federal Constitution. We assume that the Court judicially knows that the State of Texas contains the largest oil field in the world, that the State is the largest oil producing state in the Union, supplies a great portion of the petroleum and petroleum products moving in our interstate and foreign commerce,

and that the major portion of the petroleum produced in Texas moves in commerce to other states, and only a small portion is consumed in Texas.

Argument

Oil produced in Texas and reduced to possession is private property and it and its products are legitimate articles of commerce and the subject of dealings that are nation-wide. The right to own it, to buy it for shipment, and to ship it in interstate commerce is not a privilege derived from state laws and not a right which the state may fetter with conditions and restrictions, but a common right, the regulation of which is committed to Congress and denied to the states by the Commerce Clause of the Constitution. *Lemke v. Farmers Grain Co.*, 258 U. S. 50, 66 L. Ed. 458; *Schafer v. Farmers Grain Co.*, 268 U. S. 189, 69 L. Ed. 909; *West v. Kansas Natural Gas Co.*, 221 U. S. 229, 55 L. Ed. 716.

The State admits in its argument that this so-called confiscation act does not stand alone but is a part of a general series of statutes and regulations looking to the conservation of the State's natural resources. The confiscation statute is one of the penalties imposed by the law for the violation of the order of the Railroad Commission of Texas promulgated June 18th, 1935, requiring all persons desiring to handle or transport petroleum or its products in Texas to obtain tenders or permits therefor.

We are mindful of the rule of this Court requiring that statutes and regulations discussed be set out at length some where in the brief. The regulations promulgated on June 18th, 1935, however, concerning tenders, are contained in twenty-seven legal size typewritten pages, exclusive of the forms therein provided for, and contain approximately 7,500 words, and we feel that to include these regulations in the brief would be grossly improper and would place a burden on the Court which the Court's briefing rule undoubtedly never contemplated. We will content ourselves, therefore, with setting out only a few of the many provisions of those regulations, in order that the Court may see that the confiscation act, when taken with the conservation statutes generally and these regulations, imposes a direct burden on interstate commerce.

Rule 3 of Section II of the aforesaid regulations:

> "Each and every producer of oil in the State of Texas is hereby required to execute under oath a report on Form SW-1 authorizing a gatherer (whether himself or someone else) to gather the oil from the properties of such producer * * *"

Rule 7. "No person shall ship or cause to be shipped crude petroleum within or from any oil field or from a gathering pipe line or system to a transporting or trunk pipe line, from a gatherer or pipe line to railroad tank cars, trucks, steamships, or any other transporting agency, or from a pipe line to a refinery, reclaiming or treating.

plant, loading rack, gasoline plant or between any two of the above mentioned unless and until such person has obtained an SW-3 tender covering such shipment in conformity with the provisions of this order. It is intended by this rule to require the issuance of a separate Form SW-3 to cover every change of possession or control of crude oil, regardless of whether ownership changes or not."

Rule 8. "No person shall ship or cause to be shipped within or from the State of Texas any oil imported or produced therein, unless and until such person has made and caused to be registered and approved with the Commission a tender in accordance with the provisions of Section II of this order * * *."

Rule 10. "Nothing in this order shall be construed to authorize the transportation, purchase, handling or acquisition of oil produced, transported, handled or acquired in violation of the laws of the State of Texas or of the Commission's orders, rules and regulations adopted pursuant thereto. In event there is any conflict between this paragraph and any other provision of this order, the terms of this paragraph shall control."

Rule 1, Section III:

"The provisions of Section IV of this order shall apply to products transported from each and every oil field situated in the State of Texas and

shall also apply to products transported to or from each and every storage pit, pickup pit, refinery, topping plant, blending plant, gasoline plant, reclamation plant, or other plant at which a product is manufactured, treated, washed, reclaimed or processed in said state. Every person owning or possessing any product who desires to transport or to have transported such product from any oil field in the State of Texas, or to or from any such pit, refinery or plant as aforesaid must first secure from such Commission, at its office hereinafter designated for that purpose, a tender authorizing such transportation. Before such tender shall be issued by the Commission, such person shall be required to file in the office of the Commission designated as aforesaid an application in writing, supported by affidavit, on Form SW-4 as prescribed by the Commission, containing the following information:

(a) Name and address of the person tendering such product or products;

(b) Name and address of the person receiving such product or products under such tender;

(c) Amount and kind of product or products tendered;

(d) Place or places where delivery will be made to the receiving agency;

(e) Location and ownership of the storage or refinery tanks or other receptacles containing or to contain the product or products so tendered;

(f) A statement of the oil or the product from which the tendered product or products were and will be manufactured. Such statement may be made by showing that the person tendering has received or will receive under specified tenders of the Commission, oil or products (not otherwise used or disposed of) sufficient in quantity to cover the manufacture of the tendered product or products.

(g) Where the product tendered is gasoline or other product derived from gas, the person applying for a tender may, if such person is the operator of the plant at which such gasoline or product was or is to be manufactured and from which shipment is to be made, show the source of such gasoline or other product by stating the plant manufacturing same and the names and locations of the properties producing the gas constituting the source of such gasoline or other product and the period of time within which accumulated.

(h) No method of proof of the source of the tendered product or products herein referred to shall be deemed to be exclusive."

Rule 2. "The agent of the Commission in charge of the office in which an application for tender is herein required to be filed is charged with the duty

of investigating and hearing the applications for tenders filed in such office. All agents or employees of the Commission working in or attached to such office are charged with the duty of assisting said agent in charge of said office in checking, examining and calculating the accuracy of applications for tenders filed in such office. No such tender will be issued except after public hearing, held (except in case of an emergency) not less than twelve (12) hours subsequent to the filing of the application therefor and not less than five (5) hours after notice has been given by posting on a bulletin board at or in such office the names of applicants for tenders and the products and amounts stated in said applications. In case of an emergency requiring earlier consideration of an application for tender, the said agent in charge of the office where such application is filed is authorized to waive any of the formal requirements or rules of procedure stated in this paragraph, provided that the substantial requirements of this order are maintained, and provided further that the name of the applicant obtaining a tender on an emergency basis, together with products and amount thereof covered by such tender and the serial number of such tender, shall be posted on such bulletin board within twelve (12) hours after the approval of such emergency tender and remain so posted for a period of at least twenty-four (24) hours.

At the public hearing (whether held after notice as aforesaid or held without notice on a showing of emergency) any interested person shall have the right to appear and make a showing in support of or in opposition to any application for tender and to examine any witness testifying at such hearing."

Rule 4. "No application for a tender will be approved by the Commission to cover or to authorize the transportation of a product processed from oil or gas produced, transported, handled or acquired in violation of the laws of Texas or of the Commission's orders, rules and regulations adopted pursuant thereto. No application for tender will be approved by the Commission to cover or authorize the transportation of a product processed from a product of oil or gas produced, transported, handled or acquired in violation of the laws of Texas or of the Commission's orders, rules and regulations adopted pursuant thereto."

Rule 8. "No person shall transport or receive for transportation any products from any oil field or to or from any storage pit, pick-up pit, refinery, topping plant, blending plant, gasoline plant, reclamation plant, or other plant at which a product is manufactured, treated, washed, reclaimed or processed situated within the State of Texas unless

and until such person has fully complied with the provisions of this order."

Rule 1, Section VI:

"In considering an application for approval of a tender under any of the provisions of this order, the Commission reserves the right to examine the books, accounts, records and property of such applicant and to require the production of books,, accounts and records of such applicant relevant to such application in order to assist it in calculating and determining the accuracy of any application before approving same, and to reject any such application if the facts therein stated necessary to the approval of such application are found to be false or not supported by the applicant's books, records and accounts."

A tender has been defined by Article 6066a, Section 1(g), as follows:

"The word 'tender' shall mean a permit or certificate of clearance for the transportation of oil or products approved and issued or registered under the authority of the Commission."

This is enough to show, we think, that no oil may be moved either within the State of Texas or from it until the person proposing to move it obtains from the Railroad Commission of Texas a tender or permit for such

movement. It is shown, too, we think, that before the Railroad Commission will issue any such tender or permit, it must be satisfied that the oil sought to be moved has not been produced or previously transported or handled in violation of any law of the State or of any rule of the Commission. The Court will readily perceive the lengths to which the Commission can go in determining for itself whether it will grant or refuse such tender or permit. If the Commission determines that any violation has occurred with reference to the production, handling or transportation of the oil, not only will it decline to issue the tender and thus prohibit further movement of the oil, but the oil itself, upon a judgment of condemnation, will be forfeited to the State. The owner of the oil, therefore, is denied the right to put it into interstate commerce. It all amounts to just this:

The State of Texas has undertaken to withhold from all commerce, intrastate, interstate and foreign, all oil which has been produced, transported or handled in violation of any of the multitude of statutes and rules and regulations which it has devised.

It is not doubted that the states possess, and have never surrendered, the power to protect the public health, morals and safety by any appropriate legislation which is not inconsistent with the national Constitution.

Missouri, etc., Ry. Co. v. Haber, 169 U. S. 628, 42 L. Ed. 878;

McLean v. Denver, etc., R. Co., 203 U. S. 38, 51 L. Ed. 78;

Houston, etc., R. Co. v. Mayes, 201 U. S. 321, 50 L. Ed. 772.

But it is equally well settled that whenever the statutes of a state invade the domain of legislation which belongs exclusively to Congress, they are void, no matter under what class of powers they may fall or how closely allied to powers conceded to belong to the states.

Henderson v. New York, 92 U. S. 271, 23 L. Ed. 543.

Nor can the state do anything which will directly burden or impede interstate commerce, and the police power does not justify such an interference.

Kansas City Southern Ry. Co. v. Kaw Valley Drainage District, 233 U. S. 75, 58 L. Ed. 857;

Illinois Central R. Co. v. Illinois, 163 U. S. 142, 41 L. Ed. 107;

McDermott v. Wisconsin, 228 U. S. 115, 57 L. Ed. 754.

It may not interfere with interstate commerce beyond what is absolutely necessary for its self-protection.

Hannibal, etc., R. Co. v. Husen, 95 U. S. 472, 24 L. Ed. 527.

Conclusion

WHEREFORE, the Respondent prays that the Judgment entered by the Honorable, the Circuit Court of Appeals be in all things affirmed.

Respectfully submitted,

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